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JUN 09 2008

Customer No. 27061  
Confirmation No. 7333Patent  
Attorney Docket No. GEMS8081.081**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Zhang et al.  
Serial No. : 09/681,483  
Filed : April 13, 2001  
For : Method and System to Request Remotely Enabled Access to Inactive  
Software Options Resident on a Device  
Group Art No. : 2135  
Examiner : Beemnet W. Dada

**CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10**

I hereby certify that, on the date shown below, this correspondence is being:

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Date: June 9, 2008

/Kevin R. Rosin/  
Signature

Commissioner for Patents  
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**PETITION UNDER 37 C.F.R. §1.181 SEEKING SUPERVISORY REVIEW OF OFFICE  
COMMUNICATION MAILED MAY 9, 2008**

Dear Sir:

Responsive to the Office Communication mailed May 9, 2008, Applicant respectfully requests  
Supervisory Review and consideration of the Remarks set forth below:

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**In the Claims**

1. (Previously Presented) A method to access one or more inactive options resident on a device remotely located from a centralized facility comprising the steps of:
  - accessing a graphical user interface (GUI) electronically linked to a centralized facility and configured to facilitate selection from a number of option identifying parameters;
  - selecting at least one of the number of option identifying parameters for identification of one or more inactive options resident on the device;
  - transmitting an electronic request for activation of the selected one or more inactive options to the centralized facility, wherein the electronic request is transmitted via a public communication interface; and
  - authorizing transmission and installation of a software key in response to the electronic request, wherein the transmission of the software key is via a private communication interface such that the private communication interface electronically connects the centralized facility to the device.
2. (Previously Presented) The method of claim 1 wherein the software key is configured to activate the one or more inactive options and is transmitted to and installed on the device.
3. (Original) The method of claim 1 further including the steps of inputting a system ID, a host ID, a client ID, and a password to gain access to the selection step.
4. (Original) The method of claim 1 further comprising the step of formulating the electronic request by:
  - inputting a user ID;
  - inputting a system ID;
  - selecting a modality;
  - selecting a software package; and
  - selecting a usage period.
5. (Original) The method of claim 1 further comprising the step of requesting use of the one or more inactive options for one of a trial period, a pay-per-use period, a limited access period, and an indefinite period.

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6. (Original) The method of claim 1 further comprising generating a software key if the centralized facility grants access to the inactive option, wherein the software key is unique for each electronic request.

7. (Canceled)

8. (Previously Presented) The method of claim 2 wherein the software key is an alphanumeric code.

9. (Previously Presented) An access granting system comprising:  
a computerized network;  
a device having at least one non-enabled software application resident in memory thereon;

a plurality of computers connected to the computerized network, wherein at least one of the plurality of computers displays selection data to a user in a form of a graphical user interface (GUI);

a remote centralized facility electronically connected to the device and having a database, wherein the remote centralized facility includes a computer programmed to:

receive a host ID input, wherein the host ID corresponds to a physical location of the device;

identify a user selection of the at least one non-enabled software application;  
receive a request from an authorized user requesting enablement of the identified user selection;

generate a software enabler designed to permit access to the selected non-enabled software application in accordance with the received request; and

transmit the software enabler from the centralized facility to the device.

10. (Previously Presented) The system of claim 9 wherein the computer of the centralized facility is further programmed to:

receive a system ID input;

identify a modality selection; and

decide whether to generate and transmit the software enabler based on the host ID input, the system ID input, and the modality selection.

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11. (Original) The system of claim 9 wherein the computer of the centralized facility is further programmed to compare the request comprising a system ID, a host ID, a user ID, a selected non-enabled software application; and an identified modality to user and device data stored in the database, and generate the software enabler, wherein the software enabler is specific to the request and non-reusable.

12. (Original) The system of claim 10 wherein the computer of the centralized facility is further programmed to determine if the user is authorized to operate the selected non-enabled software application.

13. (Original) The system of claim 9 wherein the device is a medical component including one of a cardiology device, a computed radiology device, a computed tomography device, a magnetic resonance imaging device, an x-ray device, an ultrasound device, a picture archiving and communication device, a nuclear medicine device, and a positron emission tomography device.

14. (Canceled)

15. (Original) The system of claim 9 wherein the GUI is configured to authorize electronic communication between the centralized facility and the device.

16. (Original) The system of claim 9 wherein a user selection of a modality causes a list of available software applications to be displayed on the GUI.

17-29. (Canceled)

30. (Previously Presented) The system of claim 9 wherein the computer of the centralized facility is further programmed to:

receive a user ID input; and

verify authorization of the user ID input to request enablement of the identified user selection.

31. (Currently Amended) The computer process of claim 17. A computer process executed by a computer which, when executed by at least one processor, causes the at least one processor to:

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display a GUI configured to facilitate a request over a first communication interface to enable an inactive option resident on a remote device;  
receive an input of a device identifier;  
receive a selection of a usage period;  
receive a selection of an inactive option for enablement from the GUI;  
transmit an electronic request for activation of the inactive option, the electronic request including the device identified, the usage period, and the inactive option for enablement;  
cause a remote centralized processing station to generate a code configured to enable the selected inactive option after successful processing of the electronic request; and  
transmit the code to the device having the inactive option over a second communication interface different from the first communication interface of claim 17;  
wherein the first communication interface is a public communication interface, and wherein the second communication interface is a private communication interface.

33. (New) The computer process of claim 31 wherein the code includes an alphanumeric software key.

34. (New) The computer process of claim 31 wherein the device is a medical device including one of a cardiology device, a computed radiology device, a computed tomography device, a magnetic resonance imaging device, an x-ray device, an ultrasound device, a picture archiving and communication device, a nuclear medicine device, and a positron emission tomography device.

35. (New) The computer process of claim 31 wherein the GUI is accessible via a public communication network and configured to permit communication between a user station and the centralized facility.

36. (New) The computer process of claim 31 wherein the set of instructions further causes the at least one processor to receive an input of a user ID, a client ID, a system ID, a facility ID, and a selection of a device modality and a software package from the GUI.

37. (New) The computer process of claim 31 wherein the GUI is configured to allow selection of one of a trial use period, a limited use period, a pay-per-use period, and an indefinite use period for the inactive option.

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38. (New) A GUI to request activation of an inactive software program resident in memory of a medical imaging scanner remotely located from a centralized processing center comprising:

- a device modality selector;
- a system identification field;
- a user identification field;
- a period-of-use selector;
- a software program selector; and

a software key generation tab, whereupon user selection of the software key generation tab transmits a data transmission over a public communication connection to the centralized processing center, and wherein the data transmission represents a request to activate the inactive software program resident in memory of the medical imaging scanner over a private communication connection.

39. (New) The GUI of claim 38 wherein the device modality selector includes a drop-down menu and is configured to display a listing of device modalities including computed tomography, x-ray, magnetic resonance, echocardiography, ultrasound, nuclear medicine, and positron emission tomography.

40. (New) The GUI of claim 38 wherein the period-of-use selector includes a drop-down menu configured to display, in response to a user push-button instruction, a usage period including a trial period usage, a limited-use period usage, a pay-per-use period usage, and an indefinite period usage.

41. (New) The GUI of claim 38 wherein the data transmission is configured to represent a request to activate more than one inactive software program resident in memory of the medical imaging scanner.

42. (New) The GUI of claim 38 further comprising a generate-and-receive button, wherein a user selection of the generate-and-receive button creates the data transmission and represents an authorization to request generation of a software key at the centralized processing center and transmit the software key to the medical imaging scanner.

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PETITION

In the Decision issued by the Board on February 5, 2008, the BPAI set forth a new ground of rejection in rejecting claim 31 under 35 U.S.C. §101. Consistent with 37 C.F.R. §41.50(b), the Board informed Appellant in the Decision that prosecution could be reopened under 37 C.F.R. §41.50(b) in light of the new grounds of rejection. Responsive thereto, Applicant elected to reopen prosecution in the Response dated April 7, 2008. In the Response, Applicant amended claim 31 to overcome the new grounds of rejection issued by the Board, and also amended claims 17, 19-24, 27, and 31 to place those claims (and claims dependent therefrom) in condition for allowance. Applicant's amendments to claims 17, 19-24, 27, and 31 were consistent with the rules set forth in 37 CFR §41.50(b) and MPEP §1214.01 and constituted "appropriate amendments" as defined therein. However, responsive thereto, the Examiner mailed an Office Communication on May 9, 2008, refusing entry of the amendments on the grounds that "prosecution is closed." *Office Communication*, May 9, 2008, p. 2.

As outlined in the Board's Appeal on pages 10-11, and in 37 CFR §41.50(b), and in MPEP §1214.01, when a new ground of rejection is raised by the Board, there are only two options: (1) reopen prosecution, or (2) request rehearing. Applicant reopened prosecution. Clearly, Applicant's Amendment addressed the new grounds of rejection, and is therefore clearly appropriate. If the Examiner disagrees, the Examiner cannot simply issue a Miscellaneous Action, as the Examiner did in this case, but must treat it as a Request for Rehearing. *See* MPEP §1214.01. Applicant requests Supervisory review of the Examiner's refusal to reopen prosecution.

37 CFR §41.50(b) provides that an application will be remanded to the Examiner for reconsideration if the appellant submits "an appropriate amendment" of the claims rejected by the Board. *See also* MPEP §1214.01. An amendment is "appropriate" under the rule if it amends one or more of the claims rejected, or substitutes new claims to avoid the art or reasons adduced by the Board. *See MPEP §1214.01*, citing *Ex parte Burrowes*, 110 O.G. 599, 1904 C.D. 155 (Comm'r Pat. 1904). As further set forth in §1214.01, "[t]he new ground of rejection raised by the Board does not reopen prosecution except as to that subject matter to which the new rejection was applied" and "[i]f the Board's decision in which the rejection under 37 CFR 41.50(b) was made includes an affirmation of the examiner's rejection, the basis of the affirmed rejection is not open to further prosecution."

The amendments submitted in the Response dated April 7, 2008 constituted an "appropriate amendment," as the amendments therein included an amendment to claim 31 to overcome the new ground

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of rejection under 35 U.S.C. §101 issued by the Board. Furthermore, none of amended claims 17, 19-24, 27, and 31 were directed to subject matter whose rejection was previously affirmed by the Board. That is, Applicant did not attempt to challenge “the basis of [an] affirmed rejection [that] is not open to further prosecution” in opposition to any decision by the Board. The prior art rejection of the subject matter of claims 17, 19-23 and 31 under §102(e) over Moeller has not been “already adjudicated” as asserted by the Examiner, as the Board did not affirm the rejection of the subject matter of those claims. *See Decision on Appeal*, February 5, 2008, p. 7 (“we do not address the rejections of [claims 17, 19, 21-23, and 31] under 35 U.S.C. §§102(e) and 103(a)”). Similarly, although the Board did previously affirm the rejection of the subject matter of claim 24 under §103(a) over Moeller et al. in view of Appellant’s Admitted Prior Art, claim 24 was amended in the Response to incorporate additional subject matter that has not yet been adjudicated. In light of the above, Applicant believes it properly reopened prosecution and the amendments to claims 17, 19-24, 27, and 31 set forth in the Response dated April 7, 2008, should have been properly entered by the Examiner according to the rules set forth in 37 CFR §41.50(b) and MPEP §1214.01.

As further set forth in MPEP §1214.01, with respect to any amendments submitted by Applicant, “such amended or new claims must be directed to the same subject matter as the appealed claims” and “[a]n amendment which adds new claims without either amending the rejected claims, or substituting new claims for the rejected claims, is not appropriate.” However, MPEP §1214.01 further states that if the amendments are improper and Applicant is merely attempting to argue matters already adjudicated, “the examiner should return the application file to the Board for consideration of the amendment as a request for rehearing under 37 CFR 41.50(b)(2). . . .” Thus, even if the amendments entered by Applicant in the Response dated April 7, 2008, were inappropriate and arguments set forth therein were directed to matters already adjudicated, the Examiner cannot unilaterally refuse to act based on a presumption that “prosecution is closed.”

For these reasons, Applicant believes that the Response filed April 7, 2008, was proper under 37 CFR §41.50(b) and MPEP §1214.01. Applicant also believes that the Examiner has no support in either the CFR or MPEP for the positions set forth in the Office Communication.

Concurrent with this Petition, Applicant has also filed a Response to the Office Communication issued by the Examiner, in which Applicant has again asserted its right to again reopen prosecution pursuant to 37 C.F.R. §41.50(b). Applicant has thus requested entry of amendments pursuant to 37 C.F.R. §41.50(b) and MPEP §1214.01 overcoming the new grounds of rejection issued by the Board. In



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the concurrently filed response, Applicant has again amended claim 31 to overcome the new rejection issued by the Board in the Decision mailed February 5, 2008. Applicant has also newly added claims 32-42 and canceled claims 17-29. The claims newly presented in the concurrently filed Response are attached herewith. Amended claim 31 and new claims 32-42 are appropriate under 37 CFR §41.50(b) and MPEP §1214.01 and therefore requests that the Director instruct the Examiner to enter those amendments.

Regarding the new claims, the Examiner is directed to MPEP §1214.01(I) which states: "an amendment which adds new claims without either amending the rejected claims, or substituting new claims for the rejected claims, is not appropriate." Clearly, as long as Applicant properly amends the claim, or claims, that are newly rejected by the Board, Applicant is entitled to entry of new claims. It is noted that in reopening prosecution, as long as Applicant does not raise issues already decided by the Board, Applicant is entitled to "reopen prosecution" that includes the ability to make amendments and add new claims. *See* MPEP §1214.01.

Applicant believes that amended claim 31 and newly presented claims 32-42 are "appropriate amendments," as claim 31 has been amended to overcome the new rejection thereto under 35 U.S.C. §101 set forth by the Board. Furthermore, none of amended claims 31-42 are directed to subject matter whose rejection was previously affirmed by the Board. That is, Applicant is not attempting to challenge "the basis of [an] affirmed rejection [that] is not open to further prosecution" in opposition to any decision by the Board. The prior art rejection of the subject matter of claims 31-37 under §102(e) over Moeller has not been "already adjudicated" as asserted by the Examiner, as the Board did not affirm the rejection of the subject matter of those claims. *See Decision on Appeal*, February 5, 2008, p. 7 ("we do not address the rejections of [claims 17, 19, 21-23, and 31] under 35 U.S.C. §§102(e) and 103(a)"). Similarly, although the Board did previously affirm the rejection of the subject matter of canceled claim 24 under §103(a) over Moeller et al. in view of Appellant's Admitted Prior Art, new claim 38 has incorporated additional subject matter into the previously claimed 24 that has not yet been adjudicated on. In light of the above, Applicant believes that amended claim 31 and newly added claims 32-42 should be properly entered by the Examiner according to the rules set forth in 37 CFR §41.50(b) and MPEP §1214.01.

Applicant believes no fee is due for filing the Petition; however, should a fee be deemed necessary, Applicant hereby authorizes charging of Deposit Account No. 07-0845.

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Applicant appreciates the Director's consideration of these Remarks and cordially invites the Director to call the undersigned, should the Director consider any matters unresolved.

Respectfully submitted,

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Dated: June 9, 2008  
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